(11)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक**.....**सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
|---|---|---|

**CRIMINAL APPEAL NO.1055/2000**

**APPELLANT** (In Jail) — Kaharuram son of Baishakhu Lohar, aged about 40 years, resident of Metguda-para, Jagdalpur, at present residing at Sargipalpara, Kondagaon, Bastar, Distt. Bastar (M.P)

Vs

**RESPONDENT** — The State of Madhya Pradesh, Through Police Station Kondagaon, Distt. Bastar (M.P.)

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Present:

Miss Sharmila Singhai, Advocate for the appellant.

Mr. N.K. Mehta, Panel Lawyer for the respondent-State.

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**ORAL JUDGMENT**

**(30th August, 2007)**

**Per Dhirendra Mishra, J:**

Heard.

This appeal under Section 374 (2) of Cr.P.C. is directed against the judgment of conviction and order of sentence dated 17th February, 2000 passed in Sessions Trial No.124/99 whereby learned 2nd Additional Sessions Judge, Jagdalpur has convicted the appellant under Section 304 (II) of the IPC and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 year.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक**.....**सन् 200**

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The allegation against the appellant is that on 19.1.1999 at about 5.00 p.m. he assaulted deceased Budhram with a burning log over his head as a result of which he died on 26.1.1999.

Conviction of the appellant is based on the statements of eye-witnesses namely Smt. Anupama (PW-3), Panchram (PW-5) & Manish Shrivastava (PW-8) as also on the statement of Dr. R.K. Singh (PW-1), who examined the injured on 19.1.1999 and gave injury report of Ex.P-1. This witness has stated that deceased Budhram was brought to him in an unconscious condition. The skull bone of Budhram was depressed, however, there was no bleeding and he had advised for X-ray. Budhram was hospitalized and he died on 26.1.1999 at about 5.30 p.m. His dying declaration could not be recorded, as he was unconscious and was not in a fit condition to give the statement. After his death he conducted postmortem examination on his body and in the postmortem examination he found that parietal & occipital bones were depressed, however, he did not observe any bony injury. After opening of the skull he found clotted blood beneath parietal & occipital region and the above injuries were depressed. The deceased died because of the depressed bone of parietal & occipital region due to internal haemorrhage and his death was homicidal in nature.

Smt. Anupama (PW-3), who is the eyewitness of the incident, has stated that on the date of incident she was returning from duty in the

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**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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evening, on hearing the commotion she came out of her house and saw the appellant assaulting Budhram with a burning log as a result of which Budhram sustained injuries over his person. She went there and separated the two. Manish also came there and he telephoned the police. She has further stated that while she was trying to separate them, Kaharu also assaulted her once. Her statement is duly corroborated by the statement of Panchram (PW-5), who has also seen the appellant assaulting the deceased as also by the statement of Manish Shrivastava (PW-8).

Thus, from the evidence of above eyewitnesses the involvement of the appellant in crime in question is established.

Learned counsel for the appellant argued that taking into consideration the fact that there was no bony injury over the skull of the deceased and further considering that the deceased died after one week of the incident in the hospital, the intention to cause death cannot be attributed to the appellant and therefore, the offence against the appellant does not travel beyond Section 324 of the IPC.

On the other hand, learned Panel Lawyer for the State supports the impugned judgment.

I have heard learned counsel for the parties.

Argument advanced by learned counsel for the appellant cannot be accepted, as the appellant caused injuries by a burning log over the

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**मामला क्रमांक ..... सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
|---|---|---|

head of the deceased as a result of which deceased sustained depressed bone injuries resulting in internal haemorrhage as a result of which the deceased died on 26.1.1999. Therefore, in the considered opinion of this Court the trial court has not committed any illegality or infirmity in convicting and sentencing the appellant under Section 304-II of the IPC. However, taking into consideration that the appellant is in jail since 20.1.1999 and as such he has already completed 8 years & 8 months of jail sentence, this Court is of the opinion that ends of justice will be served if while maintaining the conviction under Section 304-II of the IPC, the jail sentence imposed upon the appellant is reduced to the period already undergone by him.

In the result, the appeal is partly allowed. Conviction of the appellant under Section 304-II of the IPC is maintained, however, the sentence imposed upon him under that section is hereby reduced to the jail sentence already undergone by him. The appellant be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge